Special Issue: Who Will Take the "Einstein Pledge"?

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Einstein, Oxnam and The Witch-Hunters

I

The background against which Einstein has issued his call for civil disobedience of the witch hunters is encouraging. There are signs of a growing revulsion against Congressional Inquisition. McCarthy has had the guidance of Father Edmund A. Walsh at Washington's ancient Jesuit university, Georgetown. But at its sister institution in the capital, Catholic University, the principal address at the commencement exercises last week was devoted to warning the graduates against the hysteria fomented by Congressional investigating committees. The Archbishop of Washington, the Most Rev. Patrick A. O'Boyle, presided and "some politicians" were criticized for their readiness to "seize upon any issue, real or spurious, to boost their fame and publicity."

There were similar warnings from as unexpected a source at Radcliffe. There the commencement speaker was Senator Stuart Symington, a business man and a right wing Democrat from Missouri, himself a member of the Senate Government Operations committee over which McCarthy presides. Symington has distinguished himself on the committee in the past by asking witnesses some remarkably inane questions about whether they believe in God. Just what their private theological opinions had to do with government operations, the committee's field of authority, has never been explained. But at Radcliffe Symington executed a quick metamorphosis and turned up as a liberal to warn that the recklessness of the Red hunters could easily turn into "a new reign of terror." Symington's sudden conversion on the road to Cambridge, Mass., was gratifying, though important chiefly as a weather indicator. Symington wants to be President, and is prepared to move left or right with the prevailing winds. Eisenhower's own gratifying remarks at Dartmouth will help turn those winds against the witch hunt.

Another hopeful development last week was the appointment of a three man subcommittee by the House Rules committee to study proposals for regulating Congressional investigations to assure "maximum fairness, dignity and efficiency." The subcommittee was suggested by two liberal-minded Republicans, Keating and Javits of New York, and had the approval of Speaker Martin. The chairman of the subcommittee is an Eisenhower Republican, Congressman Hugh Scott of Pennsylvania. Another Republican, Chenoweth of Colorado and one Democrat, Howard W. Smith of Virginia, will serve with him. Though the last is the "Smith" of the Smith Alien and Sedition Law, he is said to find McCarthyism a little too much for him. "The real offender," he declared at a hearing on proposed regulatory legislation, "is on the other side. We can only change House rules." The reference to "the other side" was to the other side of the Capitol where the Senate sits and McCarthy operates.

There are four bills before the House and two before the Senate for the reform and regulation of investigating committee procedures. One of them is by Celler of New York, who has the distinction of having cast one of the two solitary votes this year (Wier of Minnesota, the other) against the annual appropriation for the House Un-American Activities Committee. Celler's bill (H. Res. 86) would authorize the Judiciary Committee to investigate the investigators—to hold hearings on the conduct of Congressional investigating committees and draw up a code of fair procedure for them. This would give victims of the witch hunt a forum in which to state their case against the witch hunters, but it has little chance of being reported out for a vote. No sizeable section of Congress is in the mood for so thorough-going an inquiry. But enough Congressmen have been hearing from home, chiefly because of the threat to investigate the churches, to make some semblance of activity on the subject desirable.

II

The regulatory bills themselves are less than drastic. H. Res. 29 by Keating of New York provides that the subject of the inquiry shall be clearly stated; that the witness, unless the majority decides otherwise, shall have the right of counsel; that every witness at the close of his testimony shall have the right to make "a brief oral or written statement"; that an accurate stenographic record shall be kept of all proceedings and made available to witnesses; and that any person defamed by testimony shall have the right to file a sworn statement, appear on his own behalf and, if a majority of the committee permits, cross-examine adverse witnesses and subpoena witnesses on his own behalf. This is hardly enough to end Inquisition into men's beliefs.

H.R. 4123 by Javits of New York is lengthier but no more fundamental. It provides that no major investigation shall be initiated without approval of a majority of the committee; that a majority vote shall be required for the holding of executive hearings, the release of secret testimony, and the publication of reports; "that no committee shall circulate on its letterhead or over the signature of its members or its employes charges against individuals or organizations except as the committee by a majority vote shall determine". In other respects the Javits bill is the same as Keating's, except that persons injured by testimony would be allowed (with majority consent) to submit questions to adverse witnesses through the committee instead of cross-examining directly.

H. R. 178 by Klein of New York is identical with S. Res. 83 introduced in the Senate by Morse and Lehman. This is much like the two bills already summarized except that it allows somewhat broader powers to defense counsel at hearings: counsel may not only advise the witness but make ob-

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jections and support those objections with "brief statements" and legal memoranda. No report based on adverse testimony or the adverse testimony itself may be issued "unless . . . the complete evidence or testimony offered in rebuttal thereto, if any, is published prior to or simultaneously with the issuance of the report."

All these bills assume that the situation would be materially improved if committee actions were dependent on majority vote instead of being left as so often happens to the chairman or the staff. But there is no reason to believe that McCarthy, Jenner and Velde cannot on most matters command a majority of their respective committees, or that the majority on these committees is better than the chairman. The reductio ad absurdum of this approach, and the most vivid illustration of the failure to deal with the basic evils, may be found in two provisions of Senate Concurrent Resolution 10, introduced by Kefauver and supported by an impressive list of Senators from both parties, including Hunt, Magnuson, Pastore, Mrs. Smith, Hennings, Neely, Murray, Ives and Morse. Section 5 of this measure says, "No subpoena to inquire into the private affairs of any individual shall be issued to any committee except pursuant to majority vote of the committee." And Section 7 says, "No witness before a committee shall be compelled to testify as to his religious or political belief unless the committee rules by majority vote that such testimony is relevant to the inquiry."

This is to say that a committee of Congress has the right to compel a witness to testify on his private affairs and his religious or political beliefs if a majority of the committee approves. The vice of all these bills is that they imply an unlimited right of inquiry on the part of Congress and assume that only procedural reforms are necessary to correct abuse.

III

The First Amendment says Congress "shall make no law respecting an establishment of religion." This means that it can establish no standard of orthodoxy. Can it inquire into beliefs it may not regulate? There are many Catholics and not a few Protestants who believe that heterodox opinions on certain fundamental religious dogmas create a political danger for the State by leading directly to "subversive" political views. But this connection of political danger with theological error is hardly new. The Pilgrim Fathers fled from just such inquisition in the England of their time and the provision against an Established Church was intended to prevent the development of similar practices here.

A characteristic of the American system is the denial of absolute powers to the government or any of its coordinate branches. No one would argue that Congress may pass a law taking a man's property without compensation or his life without trial. But the notion has grown up that the Congressional power of investigation, unlike all other governmental powers, is virtually unlimited. The recent Rumely decision was only the latest in a series of Supreme Court opinions which have held to the contrary, though the court has yet to apply the same protection to the privacy of men's minds that it has in the past to the privacy of their moneyed accounts.

The witch hunt abuses of our time find their support in two fallacies which have nothing to do with the legitimate exercise of the Congressional power of investigation. One is that while Congress has no power to regulate opinion it has a right to expose, disgrace and pillory holders of opinions it regards as dangerous, subversive, heretical or un-American. The other is that which permits a committee of Congress to act as a roving grand jury for the discovery and punishment of individual crimes.

A section of the Fifth Amendment to which amazingly little attention has been paid in the current controversy over Congressional investigation says, "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury." The purpose was to protect accused persons from having to stand the shame of public accusation and the expense of trial until a grand jury in secret session had determined that there was enough substance in any charge to warrant publicity and trial.

Ever since Martin Dies and John Rankin these Congressional committees have announced their determination to act as a peculiar new type of "grand jury", operating in public and more than content to leave the stigma of serious crime by hit-or-miss questioning of the sort that has been well termed a "fishing expedition." Congressman Keating referred to this type of abuse in a thoughtful speech last month to the San Francisco Bar Association. Keating said that an area which "should be scrupulously avoided" by Congressional committees "is the domain of law enforcement officers and the criminal courts." Keating pointed out that "Only in the case of impeachment does Congress have the right to determine whether a particular individual has committed a specific crime against society." None of the reform proposals now in Congress would prevent investigating committees from acting as quasi grand juries nor as pillories for holders of unpopular opinions.

IV

In this ripening situation, with public opinion slowly being aroused, Einstein's proposal for civil disobedience of the Congressional Inquisitors has the merit of getting down to rock-bottom. What McCarthy, Jenner and Velde are doing is wrong. It is therefore wrong to submit to them. They are poisoning the air of America and making people in all walks of life fearful of expressing opinions which may be a little "controversial." It is in this way that they are beginning to impose thought control.

The *New York Times*, objecting to civil disobedience of the witch hunters, says, "Two wrongs never did add up to one right." The old chestnut, in this sense, is quite untrue. Gandhi made two "wrongs" add up to one right by refusing to pay the British salt tax. Long before Gandhi, an earlier generation of Americans made two wrongs add up to one right by dumping that tea in Boston harbor rather than pay the British tax upon it. The white folk of the North who

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refused to obey the Fugitive Slave Law were adding the "wrong" of civil disobedience to the wrong of slavery, and these ultimately added up to the right of emancipation. Even more in point is the fact that our privilege against self-incrimination derives in large part from the civil disobedience of John Lilburne, who refused to testify before Star Chamber in 1637 when accused of importing heretical works from Holland and asked to identify his collaborators. The evil of compulsory testimony from which the Pilgrims fled to this country was eradicated by his bravery in refusing to testify at the expense of going to jail for contempt.

The need for such fundamental defiance is illustrated by the objections advanced against it. "One cannot start," the *New York Times* said, "from the premise that Congressional committees have no right to question teachers and scientists or to seek out subversives wherever they can find them; what is profoundly wrong is the way some of them have been exercising it." The fact is that one cannot start from any other premise without making defeat inevitable. To accept ideological interrogation is to make non-conformist views of any kind hazardous. To permit Congress to seek out something as vague, undefined and undefinable as "subversion" or "un-Americanism" is to acquiesce in a heresy hunt that must inhibit free discussion in America. One man's "subversion" is another man's progress; all change subverts the old in preparing the way for the new. "Un-American" is an epithet, not a legal standard.

The *New York Times* says "An investigation which had no taint of witch-hunting, no bias of anti-intellectualism, no prejudice, no distorted ideas of what is guilt and subversion would be irreproachable." A censorship of such immaculate virtues would also be irreproachable, but the Framers of the Bill of Rights thought it safer to rely on free discussion than on the miraculous possibility that the Archangel Gabriel might decide to take the civil service exam for the office of censor.

The *New York Times* says "it is one thing to fight the investigations because of the manner of their procedure and another to oppose the right of investigation, which has always been one of the fundamentals of our governmental system." Investigations have been fundamental but the kind of investigations utilized in this witch hunt are something new in American life. The first Congressional committee of this kind was the Hamilton Fish investigation in 1930, the Red-hunt precursor of the un-American Activities Committee. The idea that a committee of Congress could interrogate Americans on their political beliefs is a revolutionary excrescence not a fundamental of American government in the past.

V

One need only compare Einstein's approach with Bishop Oxnam's to see how right the great physicist is. One cannot at one and the same time object to investigation of the churches by the House Un-American Activities Committee and the Senate Internal Security subcommittee and at the same time insist on a hearing before them as the good Bishop has done. To ask for a hearing is to acquiesce in the committee's power, to establish a precedent by which other clergymen may be hauled into the pillory. To defend oneself, as the Bishop did in that famous point-by-point rejoinder the *Washington Post* published last April 5, is to cut the ground out from under any principled objection to the Inquisition. To plead that one is not "subversive" by the standards of the Committee or of that ex parte blacklist drawn up by the Attorney General is to accept their right to establish a standard of orthodoxy and heresy in American political and religious thinking.

No one can "clear" himself or defend himself fairly before one of these committees. James Wechsler's experience before McCarthy should be demonstration enough of that. We are not dealing with men anxious to learn the truth or prepared to act honorably. We are dealing with unscrupulous political adventurers using the Red menace as their leverage to power. To try and explain to them that one is not a Communist is as humiliating as it is useless, unless one is prepared to go over completely to their service.

At the same time these committees regard the invocation of the Fifth amendment with equanimity. To invoke the Fifth is to brand oneself in the eyes of the public as guilty of any offense implied by the dirty questions these committees put. Those who plead the Fifth in most cases lose their jobs and reputations. This satisfies the committees, for their purpose is nothing less than an ideological purge of radicals and liberals from all positions of influence in American life and the demonstration to others that non-conformity is dangerous.

VI

Great faiths can only be preserved by men willing to live by them. Faith in free society requires similar testament if it is to survive. Einstein knows Fascism at first hand. History confirms his statement that "if enough people are ready to take this grave step" of defiance "they will be successful" but that if not "the intellectuals of this country deserve nothing better than the slavery which is intended for them."

The path pointed out by Einstein is that taken by the Hollywood Ten and the directors of the Joint Anti-Fascist Refugee Committee, all of whom went to jail for contempt. But tactics that did not succeed at a time when the cold war was begun may fare differently now when it is ebbing away. The Supreme Court did not hear those earlier cases and there has never been final adjudication on two major points of attack against the committees. One is whether they violate the First Amendment by inquiring into beliefs and the other whether they violate the Fifth Amendment by arrogating to themselves the functions of a grand jury. Neither point can be tested until someone dares invite prosecution for contempt.

This is the moment to try. Einstein has lent the world prestige of his name to such an effort. These committees deserve contempt, and I predict that another of the chairmen will follow J. Parnell Thomas to jail. I propose an association of American intellectuals to take the "Einstein pledge" and throw down a fundamental challenge to the establishment of an Inquisition in America.

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JENNINGS PERRY'S PAGE

In Italy Vox Populi Tells Off Lord and Lady

It is too early, perhaps, to suggest recalling our ambassador from Rome for failure of mission. Our man for premier, Alcide de Gasperi, is in again by a mere squeak, it is true. As a result all sorts of troubles may be ahead of him. He may have to bring the Monarchists into his government. He may even find it necessary to water down his support of NATO in order to pull enough left Socialists to the side of his Christo-democrats to be able to govern at all.

But our Ambassador has done what she could, according to her lights, for the advancement of our foreign policy. Her intervention in the internal affairs of the Italian people, whether on her own or at the direction of her State Department superiors, employed the same wiles which, in her experience, had worked with other electorates. She cajoled, she warned, she threatened. How could she have known the Italians would take amiss what so recently her own countrymen had relished?

One of the telling—if low—blows struck in last year's American election was a fee-fi-fo-fum production put on the air with great artistry by Mrs. Luce at the very close of the campaigning. The piece was mainly a play back of excerpts of testimony recorded at various congressional loyalty inquisitions and its purpose was to scare up Republican votes with the thought, archly supplied by the fair platter spinner, that the choice was between Eisenhower and—Stalin. That show went over big, and it was partly because of the lady's *succes fou* in the political theater that in due course she was sent with ambassadorial rank to charm Rome and keep the Italian wards in line.

In Italy, Mrs. Luce campaigned to the same effect though less dramatically. A few days before the election, she called for an overwhelming vote for "stable, democratic government," for our friend Signor De Gasperi; or, as the British New Statesman pungently noted, for "domination by the conservative, clerical Centre." She did not, indeed, warn that the alternative was to turn the country over to the Communists, but adroitly as the American spokesman let fall a caution that, if the country should go Left, it need look no more to the American treasury for comfort and aid.

I find it hard to agree with some critics that popular resentment of our Ambassador's "impertinence" was entirely responsible for the disappointing outcome of the election, or, for all of that, that our side still may not find something in the outcome that is gratifying. The Communists and the Socialist followers of Signor Nenni did gain, of course, as did the smaller Monarchist and Fascist parties of the Right extreme. But De Gasperi's coalition of moderate parties came out nevertheless with slender majorities in the senate and the chamber of deputies.

De Gasperi himself does not despair. By no means the "stable" government our Ambassador called for, the Premier's new administration counts about the same preponderance of its partisans in the legislative body as does the Eisenhower administration in the United States in the American Congress. Its necessity of relying on the Monarchists for support in a pinch ought not to be too grave a handicap: the Republicans over here have found it possible to summon votes from the opposition benches for their pet measures time and again.

As for "democratic" government, if that is our real concern, the Italian people seem inclined to practice it with full faith and fervor, casting in last week's election very near 100 per cent of the vote to which their law entitles them. The fact itself that the balloting did not go overwhelmingly as Mrs. Luce advised it to go is evidence that these people take their freedom seriously, equating the right to vote with the right to choose. For reasons sufficient to them many Italians voted left who have not voted left before and were stopped neither by the threat that American aid would be withdrawn nor by the more terrible threat, issuing from the Vatican, that their souls would be denied paradise.

This would be the doughtiest democracy, I suppose, where the electorate refuses to be either bought or intimidated, where any dictate is scorned and where the people headily regard themselves competent to pass on the public affairs. Ambassador Luce has been unable to fascinate or overawe the self-conscious Italian democrats. They probably admire her looks and cleverness. It would be a pity to bring her back before she completely appreciates their political independence.

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